

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8819 of 2014

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Kumar Shashi Kunj Son of Sudhakar Prasad Singh resident of village - Bhalar, P.S. Dharhara, District - Munger.

.... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Home Govt. of India, New Delhi.
2. Chairman Staff Selection Commission C.G.O. Complex Lodi Road, New Delhi.
3. Regional Director (C.R.) Staff Selection Commission 21-23 Lawthar Road, Allahabad, U.P.
4. Deputy Director Exam, SSC (CR.) Allahabad, U.P.
5. Commandant 27 B.N.S.S.B Narkatiyaganj, West Champaran.
6. Inspector General B.S.F. North Bengal , District - Darjeeling West Bengal.
7. DIG SHQ BSF, BSF Campus Kishanganj.
8. Assistant Commandant (MIN) HQ North Bengal Ftr, BSF District Darjeeling , West Bengal.
9. Commandant BSF Kishanganj BSF Camp. Kishanganj.
10. Chief Medical Officer SG BSF Through Assistant Commandant (MIN) HQ North Bengal BSF District Darjeeling West Bengal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. A.B. Ojha, Sr. Adv.
Mr. Bharat Bhushan, Adv.
Mr. Kumar Rajeev, Adv.
For the UOI : Mr. Sanjay Kumar, ASG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 13-03-2015

Heard learned counsel for the parties as with regard to the following prayer made in this writ application:-

"----- commanding the respondents to get the petitioner examined by any other doctor/medical officer of any reputed medical college of the state of Bihar including PMCH or by any other medical Board of any of the parliamentary/Central Police forces at any place except at B.S.F. camp Kishanganj where the petitioner even by the review medical Board has been declared to be unfit as it is the claim of the petitioner that he is not suffering from the infirmity which has been cited in the medical



examination at B.S.F. camp Kishanganj and also been reiterated in the review medical examination conducted at the same place and also which fact has been opined by an Associate Professor/HOD of orthopedic of Reputed JLNMCH Bhagalpur that the petitioner is not suffering from the said infirmity and fit for the said post and also as both the examination were done at BSF camp Kishanganj itself which does not rule's out the possibility of the petitioner being declared unfit in review Medical Board out of professional brother hood/bias and also as career and life of petitioner is at stake and further thereafter to appoint the petitioner if he passed remedical Exam and for any other order-----"

Mr. A.B. Ojha, learned senior counsel for the petitioner has submitted that it is true that the petitioner had been found to be medically disqualified in the original medical text as also in the review medical test but, then, the petitioner has a hope and believe that if he is examined by the All India Institute of Medical Science or by specialized center, he may be then declared medically fit. He has in this regard also placed reliance on an order of this Court dated 21.9.2011 in CWJC No. 16528 of 2011 (Gopi Kumar Vs. The Union of India & Ors.). Proceeding further, Mr. Ojha has also placed reliance on certain certificates issued by the doctor at Bhagalpur and has submitted that since the doctors at Bhagalpur had declared the petitioner to be fully medically fit for the job, in hand, this Court should ignore the two medical reports against the petitioner and direct the respondents to conduct yet another medical test of the petitioner.

Learned counsel for the respondent on the other hand has



submitted that every selection is based on the norms and in fact here in the present case selection also, it was made abundantly clear that in case of rejection by a medical board, the candidate will have a right to seek review before the review medical board on producing evidence that he was medically fit. In the case of the petitioner, when he was declared unfit by the medical board and he had also adduced evidence, he was sent for his review medical board but the review medical board had also hold the petitioner to be unfit and that should be the end of the matter because under the advertisement or selection norms laid down by the respondents in the advertisement or even otherwise, there is no provision for further review of the report of the medical board and review medical board.

In the considered opinion of this Court, the issue would as to how long the respondents will be required to continue to keep the selection process open. Each selection process is circumscribed by a time limit. There is a procedure laid down for holding the written test and physical test. The candidates who are found fit for being sent to the medical test are actually sent for the medical test. If in the medical test, the petitioner was held to be disqualified on any reason whatsoever, he had still a chance of seeking review and that the petitioner had availed. If the review medical board had not found the petitioner fit, he cannot be sent at least yet for another review by an independent authority.

The petitioner in fact was seeking an appointment on the post of constable in BSF and the BSF has got its own prescribed norms and standard which cannot be equated by medical standard to be adjudged by any other medical institution.

As a matter of fact, this Court earlier in the case of Gopi Kumar has not decided anything and has only given liberty to the petitioner of that case to file a representation. This Court, however, would not like that procedure to be followed in this case because way back the Apex Court in the case of **Union of India & Ors. Vs. M.K. Sarkar reported in (2010) 2 SCC 59** had observed that if no case is made out for interference by the High Court, the remedy of representation should be not allowed in order to create further source of litigation. Here in this case, the moment this Court finds that there is no provision for further review of the medical board, it will be difficult for this Court to even allow the petitioner to file a representation and keep the matter litigating. The petitioner has been found out medical unfit only for a job in the BSF, he may still have many other jobs to get.

In that view of the matter, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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